

HOUSE No. 3852

By Mr. Loscocco of Holliston, petition of Paul J.P. Loscocco and George N. Peterson, Jr., that the Division of Capital Asset Management and Maintenance be directed to convey certain parcels of land in the town of Upton to Upton Development Group, Limited. Bonding, Capital Expenditures and State Assets.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT PROVIDING FOR THE DISPOSITION OF CERTAIN PROPERTY IN THE TOWN OF UPTON.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to authorize and direct the division of
3 capital asset management and maintenance to convey certain
4 parcels of land in the town of Upton, therefore it is hereby
5 declared to be an emergency law, necessary for the immediate
6 preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. As used in this act, the following words shall,
2 unless the context clearly indicates otherwise, have the following
3 meanings:
4 “department”, the department of conservation and recreation.
5 “division”, the division of capital asset management and main-
6 tenance.
7 “state parcels”, two certain parcels of land owned by the com-
8 monwealth, under the care, custody and control of the department,
9 located in the town of Upton, having a combined total approxi-
10 mate area of 2.57 acres, and as more fully described in section 3.
11 “developer”, Upton Development Group, Ltd. acting by and
12 through Upton Fuel & Construction, Inc., the entity to which the
13 division is authorized and directed to convey all of the common-
14 wealth’s interest in the state parcels, as defined in this act.

1 SECTION 2. The conveyance authorized and directed by this
2 act will facilitate developer's proposal to redevelop and restore
3 the state parcels, which are degraded by the presence of an
4 existing solid waste landfill, to productive use in exchange for
5 approximately 12.89 acres (greater than five times the acreage of
6 the state parcels) of undisturbed land dedicated to conservation
7 purposes along with other compensation. This exchange of land
8 furthers the policies of the commonwealth to: stimulate the reuse
9 of brownfields and promote "smart growth" through the integra-
10 tion of sustainable development principles, all in an effort to
11 create jobs and new economic opportunities in the Upton area;
12 protect and enhance existing open space; and increase the amount
13 of conservation land held by the commonwealth.

1 SECTION 3. Notwithstanding Section 40H of Chapter 7 of the
2 General Laws to the contrary, division is hereby authorized and
3 directed to convey by deed or deeds, in consultation with depart-
4 ment, the state parcels to developer in accordance with the provi-
5 sions of this act. Said deeds shall be consistent with the purposes
6 set forth in this act. Said state parcels are more fully described
7 and identified as follows:

8 A certain parcel of land containing ____ acres, more or less,
9 located off of _____ Street in the Town of Upton, which con-
10 sists of [all or a portion of] the land described in [order of taking,
11 deed, instrument] recorded [date] in the [_____] District
12 Registry of Deeds at Book _____, Page _____; and

13 A certain parcel of land containing ____ acres, more or less,
14 located off of _____ Road in the Town of Upton, which consists
15 of [all or a portion of] the land described in _____
16 in [order of taking, deed, instrument] recorded [date] in the
17 [_____] District Registry of Deeds at Book _____,
18 Page _____.

19 Said state parcels are shown on a plan of land recorded in the
20 _____ District Registry of Deeds at Plan Book _____, Plan
21 _____, Sheet _____ and are presently under the care, custody and
22 control of department for conservation and recreation purposes.
23 The state parcels are also shown on a recordable plan of land enti-
24 tled "Plan of Land in Upton, MA, owners Upton Fuel and Con-
25 struction, 1"=100', dated December 29, 2003 and prepared by

26 Blackstone Valley Survey & Engineering, Inc., 268 Upton Street,
27 Grafton, MA 01519. This plan was prepared at the expense of
28 developer. The exact boundaries of the parcels have been deter-
29 mined by the developer and will be confirmed by the division, in
30 consultation with department, after review of the land survey and
31 other documents provided by the developer's land surveyor.

1 SECTION 4. As consideration for the conveyance of the state
2 parcels, division, on behalf of department, shall receive title to the
3 following three (3) parcels of land having a combined total
4 approximate area of 12.89 acres. Said parcels are to be held as
5 conservation land subject to article 97 of the articles of amend-
6 ment to the constitution of the commonwealth and are more fully
7 described as follows:

8 Parcel 1 containing _____ acres of land, more or less, located
9 in the Town of Upton, and recorded with the _____ District Reg-
10 istry of Deeds at Book _____, Page _____;

11 Parcel 2 containing _____ acres of land, more or less, located in
12 the Town of Upton, and recorded with the _____ District Registry
13 of Deeds at Book _____, Page _____; and

14 Parcel 3 containing _____ acres of land, more or less, located in
15 the Town of Upton, and recorded with the _____ District Registry
16 of Deeds at Book _____, Page _____.

17 As further consideration for the conveyance of the state parcels
18 described in Section 3, the sum of Twenty-five Thousand Dollars
19 (\$25,000.00) donated to department by developer as compensation
20 and restitution for the trespass, encroachment and contamination
21 related to the past disposal of solid and/or hazardous waste mate-
22 rials on the state parcels. Said compensation and restitution is to
23 be paid one year after the date of the issuance of the first building
24 permit for construction at the subject site and will be deposited in
25 the Parks Trust Fund. Developer's transfer of parcels 1, 2 and 3 to
26 division, acting on behalf of department and payment of \$25,000
27 as compensation and restitution to department, is deemed to sat-
28 isfy the obligations of the developer, Upton Fuels and Construc-
29 tion, Inc, and their stockholders to the commonwealth for the past
30 activities identified above.

31 Division shall also receive as additional consideration the dif-
32 ference between the full and fair market value of the state parcels

33 described in Section 3 minus the full and fair market value of the
34 parcels described in this Section 4, should any such difference
35 exist. Notwithstanding any general or special law to the contrary,
36 should the appraised value of the parcels described in this
37 Section 4 be determined to be greater than the appraised values of
38 the state parcels, the commonwealth shall not be obligated to pay
39 the difference as additional consideration to the developer. The
40 full and fair market value of the state parcels described in Section
41 3 and the full and fair market value of the parcels received by the
42 commonwealth in this Section 4 shall be as determined by an
43 independent appraisal prepared in accordance with the usual and
44 customary professional appraisal practice by a qualified appraiser
45 commissioned and instructed by the division to appraise the state
46 parcels described in Section 3 as if free of contamination and
47 without the benefit of any permits, approvals or authorizations
48 obtained by the developer.

49 Division shall submit said appraisal or appraisals to the
50 inspector general for his review and comment. Said inspector
51 general shall review and approved said appraisal or appraisals,
52 and said review shall include an examination of the methodology
53 utilized for said appraisal or appraisals. Said inspector general
54 shall prepare a report of his review and file said report with divi-
55 sion for submission by said division to the house and senate com-
56 mittees on ways and means and the chairmen of the joint
57 committee on state administration. Division shall submit copies
58 of said appraisal, and the inspector general's review and approval
59 and comments, if any, to the house and senate committees on
60 ways and means and the chairmen of the joint committee on state
61 administration at least fifteen (15) days prior to the execution of
62 said conveyance.

1 SECTION 5. Developer shall be responsible for all costs asso-
2 ciated with any appraisal, deed preparation and plan preparation,
3 or other expenses incurred by the commonwealth relating to the
4 conveyance authorized by Section 3 which division deems neces-
5 sary and appropriate.

1 SECTION 6. The conveyance authorized by this act shall in no
2 way interfere with the rights of the commonwealth to enter upon,

3 use, repair, maintain or care for state owned lands under the care
4 and control of department or any other state agency, nor shall the
5 commonwealth or its officers, agents or staff in any event be held
6 liable or responsible for any damage or inconvenience caused
7 thereby.

1 SECTION 7. Notwithstanding any general or special law to the
2 contrary, developer shall agree to hold the commonwealth, its
3 agents, and staff harmless and indemnified against all claims and
4 demands for injuries or damages to persons, or property arising
5 out of the conveyances authorized by this act.

1 SECTION 8. At the option of department, in consultation with
2 division, any additional consideration to be paid by developer may
3 be provided by in-kind contribution, so-called, as may be set forth
4 in a license or management use agreement between developer and
5 department. Any monetary consideration paid to the common-
6 wealth for the conveyances authorized by this act, other than the
7 \$25,000 to department for deposit in the Parks Trust Fund identi-
8 fied in Section 4, shall be deposited into the General Fund.

1 SECTION 9. This act shall take effect upon its passage.